

MONTANA FISH, WILDLIFE & PARKS

Legislative Proposal Form

2007 Legislature

Issue or problem statement:

In 2001 the Montana Legislature adopted HB 492 (**Appendix A**), which made several changes to 87-5-102, MCA (**Appendix B**). Most importantly, Section 5 of 87-5-102, MCA, was amended to include carefully crafted language that paved the way for “dual” legal status to be achieved for the two prairie dog species that inhabit Montana. HB492 was adopted with a sunset clause/termination date of October 1, 2007.

Achieving “nongame” status for prairie dogs was featured as Objective #1 in the then-draft Conservation Plan for White-tailed Prairie Dogs and Black-tailed Prairie Dogs in Montana. This document was formally adopted in 2002 by FWP, Montana Department of Agriculture, Montana Department of Natural Resources & Conservation, BLM, USFS Northern Region, Bureau of Indian Affairs, NRCS and APHIS: Wildlife Services. Montana’s prairie dog conservation plan can be accessed at <http://fwp.mt.gov/fwppaperapps/wildthings/pdconsplan.pdf>. The goal of this conservation plan is to provide for management of prairie dog populations and habitats to ensure the long-term viability of prairie dogs and associated species. The primary driving force behind Objective #1 of Montana’s prairie dog conservation plan is legislative and state responsibility to perpetuate native wildlife species as members of ecosystems (87-5-103, MCA – **Appendix C**). FWP and other participants in the Montana Prairie Dog Working Group deemed “nongame” status – and the capability to implement active management measures - as both appropriate and necessary in the case of prairie dogs, by virtue of their role as “keystone” species/ecosystem engineers. However, it was also abundantly obvious in 2001 that the potential to avoid listing of the black-tailed prairie dog could be reduced if Montana and other states amended existing statutes that, for all practical purposes, provided solely for the elimination of prairie dogs – and by extension, wildlife species associated with prairie dogs.

Statutes affected: 87-5-102, MCA

Previous to passage of HB 492, FWP did not have legal authority to establish rules intended to conserve prairie dogs because the language of 87-5-102 precluded “nongame” status for prairie dogs on the basis that they were “otherwise classified” elsewhere in Montana statutes. Specifically, both black-tailed and white-tailed prairie dogs are classified as “vertebrate pests” (both species included by use of the term “prairie dog”) by Montana Department of Agriculture Statutes and the black-tailed prairie dog is also classified as a “rodent” for the purpose of forming rodent control districts (80-7-1101 and 7-22-2207 (6), MCA) (**Appendix D**). HB 492 established dual legal status for both prairie dog species: clarifying that prairie dogs do fall under the classification of “nongame” wildlife, while also affirming legal status of prairie dogs under Department of Agriculture Statutes as “vertebrate pests” and also legal status of the black-tailed prairie

dog as a “rodent.” In addition, language in HB 492 reaffirmed the prerogative of landowners to continue to control prairie dogs on their private lands as they see fit.

The only other case of “dual legal status” for a wildlife species that I am aware of is bison (both “wildlife” and “livestock”). The honey bee also has dual status (both “insect” and “livestock” – altho classification as “insect” may not be explicit in statute).

Proposed legislative solution: Eliminate the sunset provision of HB492.

Potential alternatives to legislative solution:

If it is not politically feasible to eliminate the sunset provision of HB492, we should pursue extension of the sunset date for a significant period of time (3-4 bienniums/6-8 years).

Any other alternative would need to recognize and compliment historic/current statutes classifying both species of prairie dog as “vertebrate pests” (80-7-1101) and the black-tailed prairie dog as a “rodent” (7-22-2207, MCA) for the purpose of forming rodent control districts. Since it is unlikely that support could be mustered to amend these historic statutes, any other alternative would consist of a different avenue to achieving and maintaining “dual legal status” for prairie dogs.

Consequences without legislative action:

Abandoning dual status for black-tailed and white-tailed prairie dogs would put Montana in a purely reactive/vulnerable stance with regard to future events that could potentially affect prairie dogs – AS WELL AS other wildlife species associated with prairie dogs. It is also well to bear in mind that the status of Montana’s small white-tailed prairie dog population is not secure.

Both prairie dog species and three other wildlife species associated with prairie dogs have been considered for protection under the federal Endangered Species Act (ESA) as follows:

- **Black-tailed prairie dog:** The USFWS was petitioned to list the BTPD in 1998. The USFWS issued its 12-month finding of “warranted but precluded” (by higher priorities/species in greater peril) in February 2000. This finding rendered the BTPD a “candidate for listing” in all 11 states within the range of the BTPD. In 2004 the USFWS determined that “candidate” status was no longer necessary and rescinded its earlier “warranted but precluded” finding. However, the USFWS continues to monitor the status of the black-tailed prairie dog. Additional information can be found at www.r6.fws.gov/btpairedog.
- **White-trailed prairie dog:** The USFWS was petitioned to list the WTPD as threatened in 2002. The USFWS issued a negative finding in 2004 but continues to monitor the status of the species as more information becomes available. A legal challenge to this FWS finding is underway (FWS received a FOIA on its

finding in 2006). Additional information can be found at <http://mountain-prairie.fws.gov/species/mammals/wtprairiedog/>

- **Black-footed ferret:** Listed as endangered in 1964. This status continued under the ESA after it was passed in 1973. Recovery efforts have been underway here in Montana since 1994 but a viable population of ferrets has not been sustained. Additional information can be found at <http://mountain-prairie.fws.gov/species/mammals/blackfootedferret/>
- **Mountain plover:** Considered a candidate for listing as a threatened species in 1982. Proposed for listing by the USFWS in 1999 and this was re-opened for comments in 2002. The USFWS found the listing unwarranted in 2003. Litigation is pending. Additional information can be found at <http://mountain-prairie.fws.gov/species/birds/mountainplover/>
- **Ferruginous hawk:** Petitioned for listing in 1991. The USFWS found the petition unwarranted. The ferruginous hawk is a species “of concern” wherever it still occurs.

The Burrowing owl is a threatened species in Alberta and Saskatchewan and has long been a species “of concern” in Montana and other western states.

All of the above species have been on Montana’s “watch list” for a long time. Plague or other events could put any or all of them at risk in Montana, and even render them candidates for listing under the ESA. It would be far wiser for Montana to retain the ability to pursue active, balanced management of both prairie dog species (both conservation and control, as warranted and as currently provided for) than to revert to historic statutes that provide solely for elimination of prairie dogs.

It would be unwise to assume that petitions to list prairie dogs and litigation challenging negative FWS findings are concerns of the past. Of the 5 prairie dog species that occur in North America, only the black-tailed prairie dog is not currently listed or the subject of a legal challenge to a FWS finding. The FWS recently (August 2006) received a Notice Of Intent to Sue regarding its 90-day finding of “unwarranted” for the Gunnison’s prairie dog; the Utah prairie dog is currently listed as *threatened* and the FWS has been petitioned to reclassify this species as *endangered*; the Mexican prairie dog (which occurs in Mexico) is considered an endangered species; and opposition has been mounted to the decision by FWS to NOT list the white-tailed prairie dog as threatened (FWS has received a FOIA from the petitioning parties).

Public awareness and involvement needed:

The strongest support for HB 492 came from the conservation community and we can count on its continued support. HB 492 was also supported by agricultural interests (Montana Stockgrowers, Montana Grain Growers, individual landowner participants to the Montana Prairie Dog Working Group) whose primary concern was to avert listing of the black-tailed prairie dog. This issue will have to be re-visited with the Departments of Agriculture and Livestock, and with agricultural groups.

The Montana Prairie Dog Working Group is aware and supportive of the need to eliminate or extend the sunset provision of HB 492.

Efforts on the public awareness/public involvement front should include the following points (in addition to those covered in points 1-5 above).

The reasons that HB492 was supported by divergent interests include:

- The need for the state to have the ability to manage prairie dogs in a manner to achieve conservation of prairie dogs in the long-term – especially in light of the ecological role of prairie dogs as keystone species upon which other species rely for their habitat needs. This change was pursued as a necessary counterbalance to the existing statute, rather than an attempt to remove prairie dogs from the rodent control statutes or to rescind landowner prerogative to control prairie dogs on their privately owned lands.
- The need to address one of 6 listing criteria (adequacy of regulatory mechanisms) applied by the FWS in making listing decisions and thus reduce the likelihood that the black-tailed prairie dog – and/or other species associated with prairie dogs – would eventually be listed under the ESA.
- The need to provide Montana with the legal capacity to implement objectives featured in Montana’s prairie dog conservation plan and also to provide for the capability to respond to events (catastrophic plague outbreaks, major re-distribution of prairie dog shooters as a result of regulation changes in surrounding states, etc.) that could pose a threat to the state’s prairie dog population and ultimately result in listing of prairie dogs and/or other wildlife species associated with prairie dogs.

Since passage of HB492 in 2001, FWP and other entities engaged in prairie dog issues have conscientiously complied with legislative intent embodied in HB 492. We believe that we have been good stewards of the trust displayed by the disparate interests that supported HB 492. Collaborative work by all stakeholders to address prairie dog issues has continued since 2001 – largely under the auspices of the Montana Prairie Dog Working Group, and the Region 6 Prairie Dog Advisory Board. All management measures coordinated by FWP have been subject to thorough public review and comment (review and involvement by the FWP Commission,, MEPA compliance, public hearings and public comment periods associated with ARM and annual rule processes, and additional public comment at the meetings of the FWP Commission). Following is a list of prairie dog management initiatives pursued since 2001:

- Addition of black-tailed prairie dogs and white-tailed prairie dogs to Montana’s list of “nongame wildlife in need of management” (EA and ARM rule-making process 2001/2002 - **Appendix E**)
- Adoption of a well-accepted prairie dog shooting regulation that has been in effect 2002-2005 – and was recently jointly re-adopted by FWP and the FWP Commission for 2006 and 2007 (**Appendix F**). When first proposed in 2000 (EA and tentative annual rule), it was controversial and prompted a lot of public

comment. But since then, it has been quite well-accepted, due to the fact that it was crafted to provide the following benefits to stakeholders:

- Does not interfere with (and in fact supports) landowner prerogative to employ shooting as a means of controlling prairie dog populations during the period when shooting is most likely to impact prairie dog populations (when young-of-the year are dependent upon their mothers)
- Replaced the controversial, year-round “firearm discharge closure” enacted by BLM to protect reintroduced black-footed ferrets and their food source (prairie dogs) on the “40 complex” in south Phillips County. The “firearm discharge closure” prevented landowners from shooting coyotes and prevented hunters from hunting within the closure area.
- Put FWP in a proactive stance with respect to being able to respond to a catastrophic plague event or a major re-distribution of prairie dog shooters as a result of plague or redistribution of shooters as a result of changes in shooting regulations in one or more other states.
- Regional Prairie Dog Planning Process in Region 6/NE Montana, including development of regional prairie dog abundance and distribution goals. The draft Region 6 Prairie Dog Abundance and Distribution Objectives Plan and the associated draft EA can be accessed at http://fwp.mt.gov/publicnotices/notice_983.aspx
- Adoption of protocol (ARMs 12.9.1001 – 12.9.1050) in 2004 to guide any/all future translocations for prairie dogs (**Appendix G**). These ARM rules place equal emphasis on preventing inadvertent spread of plague or other diseases and ensuring that all potentially affected landowners are notified and have the opportunity to have input in proposed translocation proposals.
- The decision by the USFWS in 2004 to remove the white-tailed prairie dog from further consideration for listing under the ESA.
- Formation of a “rodent control district” in South Phillips County, in 2004. It is important to note that formation of this rodent control district was not opposed by prairie dog conservation advocates. It is likely that this action would have met with concern and opposition if it had occurred prior to passage of HB492 and the “balanced” approach to prairie dog management that this legislation achieved.
- Development of a landowner incentive package for prairie dogs by the “landowner incentive subcommittee” of the Montana Prairie Dog Working Group. This proposal was submitted to Dave White (state conservationist, NRCS) in December 2005 for consideration to receive EQUIP funding under the auspices of the 2002 Farm Bill. It was not funded, but the effort to establish a landowner incentive program of some kind will continue. (A copy of this proposal will be provided upon request.)

Appendices:

Appendix A	House Bill 492
Appendix B	87-5-102, MCA (as amended by HB492)
Appendix C	87-5-103, MCA (Legislative Intent, Findings and Policy)
Appendix D	Department of Agriculture Statutes
Appendix E	ARM 12.2.501 (Nongame Wildlife in Need of Management)
Appendix F	Prairie Dog Shooting Regulation
Appendix G	ARM 12.9.1001 – 12.9.1050 (Prairie Dog Translocation Protocol)

APPENDIX A

2001 Montana Legislature

[About Bill -- Links](#)

HOUSE BILL NO. 492

INTRODUCED BY P. CLARK, GUTSCHE



AN ACT CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO MANAGE THE PRAIRIE DOG AS A SPECIES IN NEED OF MANAGEMENT; AMENDING SECTION 87-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, Montana has a responsibility to ensure that a viable prairie dog population is maintained in the state for the long term, as well as to ensure the long-term existence of species associated with prairie dogs; and

WHEREAS, the Montana Prairie Dog Working Group is developing a conservation plan for prairie dogs in Montana to provide for management of populations and habitats in order to ensure both the long-term existence of prairie dogs and the control of prairie dogs to protect existing land uses; and

WHEREAS, the only existing statutory authority for prairie dog management is to control them as rodents under Title 7, chapter 22, part 22, MCA, and as vertebrate pests under section 80-7-1101, MCA; and

WHEREAS, the U.S. Fish and Wildlife Service (USFWS) has found that the black-tailed prairie dog is warranted for listing under the federal Endangered Species Act (ESA) over an 11-state area that includes Montana, but that listing of this species is precluded at the present time because other candidate species have a higher priority for listing; and

WHEREAS, the USFWS finding is based in part on the inadequacy of regulatory mechanisms that Montana and other states currently possess to ensure maintenance of viable prairie dog populations for the long term; and

WHEREAS, Montana and 10 other states have entered into an agreement to jointly develop management plans that address the needs of the species across virtually its entire range, thus improving the status of the black-tailed prairie dog to the point that it can be removed from consideration for listing under the ESA; and

WHEREAS, the USFWS will review the status of the black-tailed prairie dog on an annual basis; and

WHEREAS, it is desirable to enable the Department of Fish, Wildlife, and Parks and the Department of Agriculture to implement management actions contained in Montana's prairie dog conservation plan while specifically protecting the current ability of landowners to manage prairie dogs on their lands; and

WHEREAS, it is desirable to facilitate long-term conservation of prairie dogs according to the conservation plan for prairie dogs in Montana while simultaneously reducing the likelihood that the black-tailed prairie dog will be listed under the ESA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 87-5-102, MCA, is amended to read:

"87-5-102. Definitions. As used in this part, the following definitions apply:

- (1) "Account" means the nongame wildlife account established in 87-5-121.
- (2) "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.
- (3) "Endangered species" means ~~any~~ a species or subspecies of wildlife that is actively threatened with extinction due to any of the following factors:
 - (a) the destruction, drastic modification, or severe curtailment of its habitat;
 - (b) its overutilization for scientific, commercial, or sporting purposes;
 - (c) the effect on it of disease, pollution, or predation;
 - (d) other natural or ~~man-made~~ artificial factors affecting its prospects of survival or recruitment within the state; or
 - (e) any combination of the foregoing factors.
- (4) "Management" means the collection and application of biological information for the purposes of ~~increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such levels~~ conserving populations of wildlife consistent with other uses of land and habitat. The term includes the entire range of activities that constitute a modern scientific resource program, including but not limited to research, census, law enforcement, habitat improvement, control, and education. ~~Also included within the term, when and where appropriate, is~~ The term also includes the periodic or total protection of species or populations as well as regulated taking.
- (5) "Nongame wildlife" means ~~any~~ a wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise legally classified by statute or regulation of this state. Animals designated by statute or regulation of this state as predatory in nature are not

classified as nongame wildlife for purposes of this part. Prairie dogs are nongame wildlife and may be managed, controlled, and regulated under this part. Management and control by counties and the department of agriculture pursuant to Title 7, chapter 22, part 22 or 25, and Title 80, chapter 7, part 11, and control by the department of natural resources and conservation on state trust lands are permitted as long as the management and control are consistent with any management plan approved by the department, the department of natural resources and conservation, and the department of agriculture. Nothing in this part may be interpreted to limit a landowner's ability to control prairie dog concentrations on private lands.

(6) "Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.

(7) "Person" means ~~any~~ an individual, firm, corporation, association, or partnership.

(8) "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

(9) "Wildlife" means ~~any~~ a wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or any part, product, egg, or offspring or the dead body or parts ~~thereof~~ of the animal."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Termination. [This act] terminates October 1, 2007.

- END -

Latest Version of HB 492 (HB0492.ENR)

Processed for the Web on April 17, 2001 (9:01AM)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted. See the [status of this bill](#) for the bill's primary sponsor.

[Status of this Bill](#) | [2001 Legislature](#) | [Leg. Branch Home](#)

[This bill in WP 5.1](#) | [All versions of all bills in WP 5.1](#)

[Authorized print version w/line numbers \(PDF format\)](#)

Prepared by Montana Legislative Services

(406)444-3064

APPENDIX B

87-5-102. (Temporary) Definitions. As used in this part, the following definitions apply:

- (1) "Account" means the nongame wildlife account established in [87-5-121](#).
- (2) "Commercial purposes" means the collection, harvest, possession, or transportation of a species or subspecies of nongame wildlife from the wild with the intent to barter, offer for sale, ship or transport for eventual sale, or sell the animal or any part of the animal.
- (3) "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.
- (4) "Endangered species" means a species or subspecies of wildlife that is actively threatened with extinction due to any of the following factors:
 - (a) the destruction, drastic modification, or severe curtailment of its habitat;
 - (b) its overutilization for scientific, commercial, or sporting purposes;
 - (c) the effect on it of disease, pollution, or predation;
 - (d) other natural or artificial factors affecting its prospects of survival or recruitment within the state; or
 - (e) any combination of the foregoing factors.
- (5) "Management" means the collection and application of biological information for the purposes of conserving populations of wildlife consistent with other uses of land and habitat. The term includes the entire range of activities that constitute a modern scientific resource program, including but not limited to research, census, law enforcement, habitat improvement, control, and education. The term also includes the periodic protection of species or populations as well as regulated taking.
- (6) "Nongame wildlife" means a wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise legally classified by statute or regulation of this state. Animals designated by statute or regulation of this state as predatory in nature are not classified as nongame wildlife for purposes of this part. Prairie dogs are nongame wildlife and may be managed, controlled, and regulated under this part. Management and control by counties and the department of agriculture pursuant to Title 7, chapter 22, part 22 or 25, and Title 80, chapter 7, part 11, and control by the department of natural resources and conservation on state trust lands are permitted as long as the management and control are consistent with any management plan approved by the department, the department of natural resources and conservation, and the department of agriculture. Nothing in this part may be interpreted to limit a landowner's ability to control prairie dog concentrations on private lands.
- (7) "Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the

ability of the habitat to continue that function.

(8) "Person" means an individual, firm, corporation, association, or partnership.

(9) "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

(10) "Wildlife" means a wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or any part, product, egg, or offspring or the dead body or parts of the animal. *(Terminates October 1, 2007--sec. 3, Ch. 521, L. 2001.)*

87-5-102. (Effective October 1, 2007). Definitions. As used in this part, the following definitions apply:

(1) "Account" means the nongame wildlife account established in [87-5-121](#).

(2) "Commercial purposes" means the collection, harvest, possession, or transportation of a species or subspecies of nongame wildlife from the wild with the intent to barter, offer for sale, ship or transport for eventual sale, or sell the animal or any part of the animal.

(3) "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.

(4) "Endangered species" means a species or subspecies of wildlife that is actively threatened with extinction due to any of the following factors:

(a) the destruction, drastic modification, or severe curtailment of its habitat;

(b) its overutilization for scientific, commercial, or sporting purposes;

(c) the effect on it of disease, pollution, or predation;

(d) other natural or artificial factors affecting its prospects of survival or recruitment within the state; or

(e) any combination of the foregoing factors.

(5) "Management" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining those levels. The term includes the entire range of activities that constitute a modern scientific resource program, including but not limited to research, census, law enforcement, habitat improvement, and education. The term also includes the periodic or total protection of species or populations as well as regulated taking.

(6) "Nongame wildlife" means a wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise legally classified by statute or regulation of this state. Animals designated by statute or regulation of this state as predatory in nature are not classified as nongame wildlife for purposes of this part.

(7) "Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.

(8) "Person" means an individual, firm, corporation, association, or partnership.

(9) "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

(10) "Wildlife" means a wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or any part, product, egg, or offspring or the dead body or parts of the animal.

History: En. Sec. 2, Ch. 461, L. 1973; amd. Sec. 12, Ch. 417, L. 1977; R.C.M. 1947, 26-1802(3), (part (4)), (5) thru (10); amd. Sec. 1, Ch. 627, L. 1983; amd. Sec. 1, Ch. 301, L. 2001; amd. Sec. 1, Ch. 521, L. 2001.

APPENDIX C

87-5-103. Legislative intent, findings, and policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Nongame and Endangered Species Conservation Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) The legislature finds and declares all of the following:

(a) that it is the policy of this state to manage certain nongame wildlife for human enjoyment, for scientific purposes, and to ensure their perpetuation as members of ecosystems;

(b) that species or subspecies of wildlife indigenous to this state that may be found to be endangered within the state should be protected in order to maintain and, to the extent possible, enhance their numbers;

(c) that the state should assist in the protection of species or subspecies of wildlife that are considered to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment within this state of species or subspecies of wildlife unless those actions will assist in preserving or propagating the species or subspecies.

History: En. Sec. 3, Ch. 461, L. 1973; R.C.M. 1947, 26-1803; amd. Sec. 36, Ch. 361, L. 2003.

APPENDIX D

80-7-1101. Department to operate vertebrate pest management program. The department may establish and operate organized and systematic programs for the management and suppression of vertebrate pests. Vertebrate pests are defined as jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, skunks, raccoons, bats, and the following depredatory and nuisance birds: blackbirds, cowbirds, starlings, house sparrows, and feral pigeons, when they are injurious to agriculture, other industries, and the public. For this purpose, the department may enter into written agreements with appropriate federal agencies, other state agencies, counties, associations, corporations, or individuals covering the methods and procedures to be followed in the management and suppression of these vertebrate pests, the extent of supervision to be exercised by the department, and the use and expenditure of funds appropriated, when this cooperation is necessary to promote the management and suppression of vertebrate pests. Management is the correct identification of a vertebrate pest; recognition of its biology and environmental needs; assessment of the pest's damage, injury, or nuisance to agriculture, industry, or the public prior to selecting and implementing any integrated or individual control methods to reduce, prevent, or suppress these damages, nuisances, or injuries; and evaluating the effects of these control methods.

History: En. Sec. 1, Ch. 136, L. 1949; amd. Sec. 44, Ch. 310, L. 1974; amd. Sec. 1, Ch. 242, L. 1975; R.C.M. 1947, 3-2701; amd. Sec. 2, Ch. 65, L. 1983; MCA 1981, ; redes. by Sec. 4, Ch. 65, L. 1983.

7-22-2207. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

- (1) "Board" means the rodent control board for a district.
- (2) "Department" means the department of agriculture.
- (3) "District" means a rodent control district created under the provisions of this part.
- (4) "Fund" means the rodent control district fund authorized by [7-22-2221](#).
- (5) "Governing body" means the governing body specified in the alternative form of government adopted by a county.
- (6) "Rodent" means Columbia ground squirrel (*Spermophilus columbianus*), Richardson ground squirrel (*Spermophilus richardsonii*), Armatus ground squirrel (*Spermophilus armatus*), thirteen-striped ground squirrel (*Spermophilus tridecemlineatus*), pocket gopher (*Thomomys*, various species), field mice (*Microtus*, various species), and prairie dog (*Cynomys ludovicianus*).

History: En. Sec. 1, Ch. 391, L. 1981; amd. Sec. 1, Ch. 67, L. 1983.

APPENDIX E

ADMINISTRATIVE RULES OF MONTANA

Nongame Wildlife

12.2.501 NONGAME WILDLIFE IN NEED OF MANAGEMENT (1)

The following nongame wildlife species are determined by the department to be nongame wildlife in need of management within the meaning of the Nongame and Endangered Species Conservation Act, 87-5-101, MCA, et seq.:

- (a) crayfish - Pacifasticus spp.;
Orconectes spp.;
 - (b) freshwater mussels - all species of Pelecypoda;
 - (c) yellow perch - Perca flavescens;
 - (d) crappie - Pomoxis;
 - (e) black-tailed prairie dogs - Cynomys ludovicianus;
 - (i) under 87-5-102, MCA, department management of black-tailed prairie dogs applies to public lands only; and
 - (f) white-tailed prairie dogs - Cynomys leucurus;
 - (i) under 87-5-102, MCA, department management of white-tailed prairie dogs applies to public lands only.
- (2) Management regulations for these species will be issued annually by the department. (History: 87-1-301, 87-5-105, MCA; IMP, 87-1-301, 87-5-105, MCA; NEW, Eff. 9/4/75; AMD, 1977 MAR p. 946, Eff. 11/26/77; AMD, 1979 MAR p. 1388, Eff. 11/16/79; AMD, 1989 MAR p. 26, Eff. 1/13/89; EMERG, AMD, 1991 MAR p. 2032, Eff. 11/1/91; AMD, 1993 MAR p. 953, Eff. 5/14/93; TRANS, from ARM 12.5.301, Eff. 6/30/93; AMD, 1995 MAR p. 1571, Eff. 8/11/95; AMD, 2002 MAR p. 526, Eff. 3/1/02.)

APPENDIX F

BIENNIAL RULE REGULATING PRAIRIE DOG SHOOTING ON PUBLIC LANDS

By order of Montana Fish, Wildlife & Parks and the Montana Fish, Wildlife & Parks Commission, the shooting of black-tailed prairie dogs and white-tailed prairie dogs shall be open from March 1, 2006 through February 28, 2007 and March 1, 2007 through February 28, 2008 with the following exceptions:

SEASONAL SHOOTING CLOSURE

Black-tailed prairie dogs -

Shooting of black-tailed prairie dogs occupying public lands other than state school trust lands within the state of Montana will be closed during the months of March, April and May of 2006 and 2007. This seasonal prairie dog shooting closure does not apply to privately owned lands. Landowner permission is required to shoot black-tailed prairie dogs on private land. For shooting privileges on Indian Reservations inquire at Tribal headquarters.

YEAR-ROUND CLOSURES

Black-tailed prairie dogs on BLM lands in south Phillips County designated as black-footed ferret reintroduction areas -

Shooting of black-tailed prairie dogs occupying BLM lands in the portion of south Phillips County described below will be closed year-round, March 1, 2006 through February 28, 2008. Within the approximately 25,000 acres encompassed by the following legal description, approximately 1,300 acres are occupied by black-tailed prairie dogs.

Two portions of south Phillips County:

1) BLM lands within the following described sections of Phillips County designated as the "40 Complex," located between Dry Fork and Beauchamp Creek (encompasses 9 prairie dog colonies):

T24N, R27E: S20, S21, S25, S26, S27, S28, N1/2 and SE1/4 of S29, S34, S35

T24N, R28E: lots 1-4, E1/2W1/2 and E1/2 of S31, S32

T23N, R27E. lots 1-4, S1/2N1/2 and S1/2 of S1, lots 1-4, S1/2N1/2 and S1/2 of S2, lot 1, SE1/4NE1/4 and E1/2SE1/4 of S3, E1/2NE1/4 and NE1/4SE1/4 of S10, S11, S12, S13

T23N. R28E: lots 1-4, S1/2N1/2 and S1/2 of S5, lots 1-7, SE1/4NW1/4, S1/2NE1/4, SE1/4 and E1/2SW1/4 of S6, lots 1-4, E1/2W1/2 and E1/2 of S7, S8, S17, lots 1-4, E1/2W1/2 and E1/2 of S18

2) BLM lands within an area south of Pea Ridge (encompasses 6 prairie dog colonies):

T.22N, R.29E: S9, S10, S11, S13, S14, S15, E1/2 and S1/2SW1/4 of S17, N1/2 and SE1/4 of S20, S21, S22, S23, S24, S 25, S26, S27, S28, S29

T22N, R 30E: lots 1-4, E1/2W1/2 and E1/2 of S18, lots 1-4, E1/2W1/2 and E1/2 of S19, lots 1-4, E1/2W1/2 and E1/2 of S30

White-tailed prairie dogs in a portion of Carbon County:

Shooting of white-tailed prairie dogs occupying public lands other than state school trust lands within the following described portion of Carbon county will be closed year-round, March 1, 2006 through February 28, 2008.

Portion of Carbon County

That portion of Carbon County within the following described boundary: Beginning where the Beartooth highway (Highway 212) crosses the Wyoming state line, then north along highway 212 to its junction with Highway 72 at Rockvale, then south along Highway 72 to Edgar, then east along the Edgar to Pryor Road to the Crow Reservation boundary, then south and east along the Crow Reservation boundary to Bighorn Lake, then south along the west shore of Bighorn Lake to the Wyoming state line, then west along the Wyoming state line to its junction with the Beartooth Highway (Highway 212), the point of beginning. Within this area, white-tailed prairie dogs occupy approximately 120 acres.

These regulations are jointly adopted by Montana Fish, Wildlife & Parks and the Montana Fish, Wildlife & Parks Commission pursuant to MCA 87-5-105 and MCA 87-1-301(1)a, respectively.

Montana Fish, Wildlife & Parks

Montana Fish, Wildlife & Parks
Commission

BY:

M. Jeff Hagener, Director, FWP

Steve Doherty, Commission Chairman,
FWP

Date: February 21, 2006

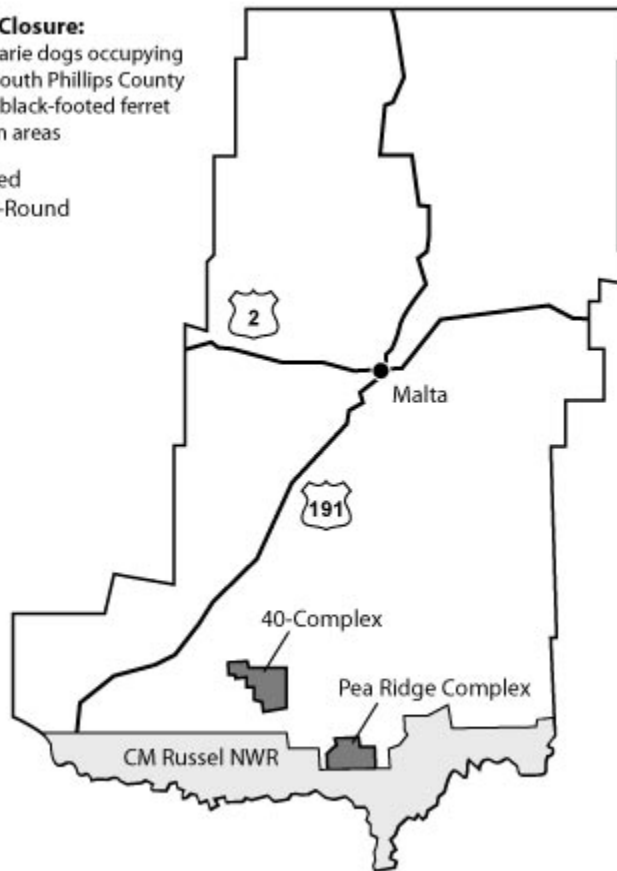
Date: February 21, 2006

Black-Tailed Prairie Dog Closures

Year-Round Closure:

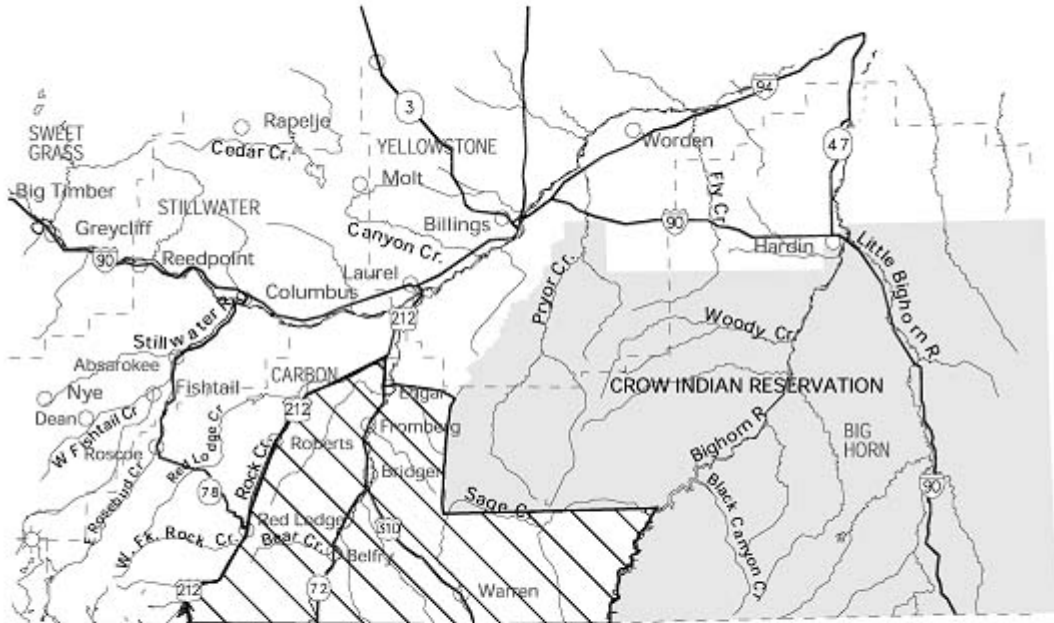
Black-tailed prairie dogs occupying BLM lands in South Phillips County designated as black-footed ferret re-introduction areas

■ Closed
■ Year-Round

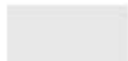


White-tailed Prairie Dogs Closures

YEAR-ROUND CLOSURE: White-tailed prairie dogs occupying a portion of Carbon County



White-tailed Prairie Dog
Closure Area



Crow Indian Reservation

APPENDIX G

ADMINISTRATIVE RULES OF MONTANA

WILDLIFE [12.9.1001](#)

Sub-Chapter 10

Translocation of Prairie Dogs

[12.9.1001](#) **DEFINITIONS** (1) "Confirmed sylvatic plague" means the presence of plague-positive fleas, prairie dogs or other mammals has been documented.

(2) "Historically occupied range" means the area encompassed by the outer limits of the historic distribution of a species. The historic range of the black-tailed prairie dogs is depicted on page 12 of the "Conservation Plan for Black-tailed and White-Tailed Prairie Dogs in Montana" published in 2002. This document is posted on the department webpage <http://fwp.state.mt.us>.

(3) "Presumed sylvatic plague" means that visual observation indicates evidence of numerical declines in prairie dog numbers in the absence of poisoning or other known sources of prairie dog mortality.

(4) "Receiving area" means the site to which prairie dogs are relocated.

(5) "Sending area" means the site where prairie dogs are currently located and from which prairie dogs may be removed for relocation to another site.

(6) "Translocation" means removing prairie dogs from one location to a new location with the intent to permanently establish them at the new location. (History: [87-1-301](#), [87-5-105](#), MCA; [IMP](#), [87-1-301](#), [87-5-105](#), MCA; [NEW](#), 2004 MAR p. 1756, Eff. 8/6/04.)

Rules 12.9.1002 through 12.9.1004 reserved

[12.9.1005](#) **PROPOSALS TO TRANSLOCATE PRAIRIE DOGS**

(1) Persons may translocate prairie dogs provided that a proposal for the translocation complies with this subchapter and is approved by the appropriate department regional supervisor(s).

(2) The sending/receiving area proponents shall provide a translocation proposal to the department regional supervisor (or both regional supervisors if more than one department administrative region is involved).

(3) A proposal for translocation of prairie dogs must conform to the Montana Environmental Policy Act (MEPA) and must include the following information:

(a) name(s) of the willing owner(s) of the sending area and name(s) of the willing owner(s) of the receiving area;

(b) a map illustrating land ownership and public lands leases, for the sending area and land ownership and public land leases within a six-mile radius of the receiving area;

(c) a rationale explaining the need for and the objectives of the translocation, and an explanation of why relocation of prairie dogs from the sending area to the receiving area is desirable;

(d) evidence that landowners and/or public land managers within a six-mile radius of the receiving area have been notified by certified mail of the proposed translocation of prairie dogs. Any comments by these potentially affected landowners and/or public land managers regarding the proposed translocation must be included in the proposal;

(e) a description of both the sending and receiving areas which should include, but are not limited to, the following:

- (i) general topography;
- (ii) vegetation types;
- (iii) landscape setting; and

(iv) a discussion of recent and historic occupancy of the area by prairie dogs, incidence of disease, past poisoning efforts if known, presence or absence of other associated species in the area for both the sending and the receiving areas, and any other information supporting the ultimate success of the translocation such as site preparation or natural habitat features that promote retention of translocated prairie dogs and that are conducive to long-term maintenance of prairie dogs and other wildlife species associated with prairie dogs;

(f) a description of potential threats to other wildlife species and to agricultural production that may occur as a result of the proposed translocation. The proposal must contrast potentially significant threats with potential benefits;

(g) measures the applicant(s) intends to use to minimize potential threats to other wildlife species and to agricultural production;

(h) a description of how the trapping and transport guidance criteria of ARM [12.9.1010](#) will be met;

(i) a description of how the monitoring plan criteria of ARM [12.9.1020](#) will be met;

(j) a description of how the conflict resolution plan of ARM [12.9.1025](#) will be met;

(k) a statement indicating whether the sending and receiving areas have been prioritized by the department regional office; and

(l) copies of any documents required for environmental compliance (including public notification) or permits required by federal, state and/or local government.

(4) Translocation of prairie dogs from federal land to federal land within a national wildlife refuge will be coordinated in advance with the appropriate department administrative region. Translocation of prairie dogs originating from outside a national wildlife refuge, to areas within a refuge, will follow the procedures established by this subchapter. (History: [87-1-301](#), [87-5-105](#), MCA; [IMP](#), [87-1-301](#), [87-5-105](#), MCA; [NEW](#), 2004 MAR p. 1756, Eff. 8/6/04.)

Rules 12.9.1006 through 12.9.1009 reserved

[12.9.1010](#) **CRITERIA FOR SENDING AREAS** (1) An area may qualify as a sending area when one or more of the following conditions exist at the sending area:

(a) the landowner/public land manager needs or desires to reduce prairie dog density or overall acreage of prairie dog towns;

(b) the area supports sufficient acres and density of prairie dogs to provide donor stock without significantly impacting prairie dog density or overall acreage of prairie dogs;

(c) the presence of prairie dogs conflicts with urban expansion or agricultural production and there is little to no opportunity to reconcile conflicts between these land uses and prairie dog occupancy; or

(d) prairie dog colonies are threatened by lethal control. (History: [87-1-301](#), [87-5-105](#), MCA; [IMP](#), [87-1-301](#), [87-5-105](#), MCA; [NEW](#), 2004 MAR p. 1756, Eff. 8/6/04.)

Rules 12.9.1011 through 12.9.1014 reserved

[12.9.1015](#) CRITERIA FOR RECEIVING AREAS (1) With approval of the department, prairie dogs may be relocated to an area within the historically occupied range of prairie dogs that complies with one or more of the following conditions:

(a) prairie dogs occupied the area historically, and the area is now vacant prairie dog habitat;

(b) the area contains an isolated prairie dog population or is isolated prairie dog habitat;

(c) the area is below prairie dog management objectives and where augmentation is a management strategy;

(d) the area contains suitable habitat within the historic distribution of prairie dogs but where previous occupation by prairie dogs is not documented; or

(e) the area complies with (1)(a) through (d) and where additional prairie dog colonies or increased prairie dog density will assist enhancement of prairie dogs and associated species that are rare or declining.

(2) Prairie dogs may not be moved to a location outside their historically occupied range. (History: [87-1-301](#), [87-5-105](#), MCA; [IMP](#), [87-1-301](#), [87-5-105](#), MCA; [NEW](#), 2004 MAR p. 1756, Eff. 8/6/04.)

Rules 12.9.1016 through 12.9.1019 reserved

[12.9.1020](#) MONITORING PLAN – PRAIRIE DOG TRANSLOCATION

(1) For each translocation, project monitoring must be conducted at the receiving area.

(2) A monitoring plan must be included with or attached to the translocation proposal. The department or the Montana prairie dog working group will provide assistance if requested. The monitoring plan must contain the following:

(a) a description of the methodology and time lines of data collection;

(b) a description of the amount of acreage occupied by prairie dogs at the receiving area prior to the release;

(c) a description of any habitat that prairie dogs previously occupied but that is vacant at the time of the translocation;

(d) a description of any other baseline habitat information pertaining to the release;

(e) provisions for one-year and three-year post-release assessments. These assessments must compare translocation results with the baseline inventory and must be provided to the department; and

(f) a provision for assessment of the translocation's success by comparing results of the translocation to the objectives stated in the translocation proposal, and the requirements of this subchapter. (History: [87-1-301](#), [87-5-105](#), MCA; [IMP](#), [87-1-301](#), [87-5-105](#), MCA; [NEW](#), 2004 MAR p. 1756, Eff. 8/6/04.)

Rules 12.9.1021 through 12.9.1024 reserved

[12.9.1025](#) CONFLICT RESOLUTION PLAN (1) A conflict resolution plan approved and signed by the landowner or land manager at the receiving site must be included with or attached to the proposal for translocation. The conflict resolution plan must detail the following information:

- (a) potential conflicts with private lands or public lands adjacent to the receiving area, including conflicts with agricultural production;
- (b) solutions that will be implemented to resolve conflicts with agricultural production and other landowner conflicts, including identification of the person(s)/party(s) responsible for implementing proposed solutions;
- (c) potential conflicts between prairie dogs and other wildlife species;
- (d) solutions that will be implemented to resolve conflicts between prairie dogs and other wildlife species, including identification of the person(s)/party(s) responsible for implementing proposed solutions; and
- (e) a statement signed by the landowner/land manager at the receiving area that acknowledges responsibilities to other landowners/land managers that will be incurred upon translocation of prairie dogs, and commitment to implement all provisions of the conflict resolution plan. (History: [87-1-301](#), [87-5-105](#), MCA; [IMP](#), [87-1-301](#), [87-5-105](#), MCA; [NEW](#), 2004 MAR p. 1756, Eff. 8/6/04.)

Rules 12.9.1026 through 12.9.1029 reserved

[12.9.1030](#) CAPTURE AND TRANSPORTATION OF PRAIRIE DOGS

(1) Persons who have department approval to translocate prairie dogs shall comply with the following criteria when capturing and transporting prairie dogs:

- (a) prairie dogs may be captured and translocated between the dates of June 30 and October 31. Prairie dogs shall not be moved earlier or later than this time period unless a written exception is granted by the regional supervisor;
- (b) persons translocating prairie dogs shall attempt to capture an entire town or portion of a town in order to move entire family units together;
- (c) a translocation group should consist of at least 100 black-tailed prairie dogs or 30 white-tailed prairie dogs. Permission to translocate a smaller number of individuals may be granted by the regional supervisor;
- (d) persons authorized to translocate prairie dogs shall monitor the sending and receiving areas for sylvatic plague as outlined in ARM [12.9.1035](#) and must notify the department immediately if presumed plague is noted;
- (e) any prairie dogs that become sick or die during transport shall be examined by a qualified individual. If there is a possibility that plague is implicated in the cause of

death, the entire group of animals shall be placed and remain under quarantine while the animal(s) in question is referred to a laboratory to determine whether plague is the cause of the sickness. If sylvatic plague is confirmed, the sylvatic plague precautions described in ARM [12.9.1035](#) and the quarantine procedures described in ARM [12.9.1040](#) must be followed.

(2) The white-tailed prairie dog is the only species of prairie dog that may be translocated from a sending area outside of Montana to a receiving area within Montana. White-tailed prairie dogs from sending areas outside of Montana must be quarantined under the procedures established by ARM [12.9.1040](#). (History: [87-1-301](#), [87-5-105](#), MCA; [IMP](#), [87-1-301](#), [87-5-105](#), MCA; [NEW](#), 2004 MAR p. 1756, Eff. 8/6/04.)

Rules 12.9.1031 through 12.9.1034 reserved

[12.9.1035 SYLVATIC PLAGUE PRECAUTIONS](#) (1) Prairie dogs may not be moved from an area with presumed or documented sylvatic plague to an area where plague is not present.

(2) At a minimum, sending and receiving areas must be monitored 14 days prior to trapping and again within 48 hours of trapping to determine whether any evidence of plague is present.

(3) If presumed plague is indicated at a sending or receiving area, the department must be notified immediately and the translocation proposal may be altered or cancelled.

(4) Prairie dogs may not be transported from a sending area within five miles of a site with presumed or confirmed sylvatic plague for a minimum of one year after the site was presumed or confirmed to have plague.

(5) Where there is no evidence of presumed or documented plague, or if the receiving area is within 50 miles of the sending area, quarantine is unnecessary if the following conditions are met:

(a) there is no evidence of numerical declines in population numbers that would suggest plague;

(b) pre-capture monitoring at the sending site 14 days prior and within 48 hours prior to trapping indicates no evidence of rapid or unexplained declines in prairie dog numbers or the presence of prairie dog carcasses that would signal presumed plague; and

(c) prairie dogs are treated for fleas at the capture area with carbaryl, permethrin, or other appropriate pulicide. (History: [87-1-301](#), [87-5-105](#), MCA; [IMP](#), [87-1-301](#), [87-5-105](#), MCA; [NEW](#), 2004 MAR p. 1756, Eff. 8/6/04.)

Rules 12.9.1036 through 12.9.1039 reserved

[12.9.1040 QUARANTINE PROCEDURES](#) (1) Animals at risk for plague must be held in quarantine for at least 14 days.

(2) Cages in quarantine facilities must be suspended by wires or chains at least one meter off the ground and separated from adjacent cages by a minimum of 60 centimeters.

(3) Animals placed in quarantine cages must remain in the same cages for the

duration of the quarantine. Animals that are not part of the original group under quarantine must not be placed in cages within the quarantined group or in adjacent cages.

(4) Prairie dogs that die during the 14-day quarantine period must be necropsied and tested for plague.

(5) If plague is discovered within the group under quarantine, the group of animals must be kept in quarantine for an additional 14 days. (History: [87-1-301](#), [87-5-105](#), MCA; [IMP](#), [87-1-301](#), [87-5-105](#), MCA; [NEW](#), 2004 MAR p. 1756, Eff. 8/6/04.)

Rules 12.9.1041 through 12.9.1044 reserved

12.9.1045 APPROVAL PROCESS FOR TRANSLOCATION PROPOSALS

(1) The translocation proposal must comply with ARM 12.9.1005, [12.9.1010](#), [12.9.1015](#), [12.9.1020](#), [12.9.1025](#), [12.9.1030](#), [12.9.1035](#), and [12.9.1040](#) and must undergo public review in accordance with MEPA. The department regional supervisor shall review prairie dog translocation proposals and render a final decision in writing within 30 days of the conclusion of a decision process that complies with MEPA. If a translocation proposal affects more than one region, the regional supervisor of each region affected by the proposal must sign the final decision.

(2) If a regional supervisor(s) denies a translocation proposal, the written decision must include an explanation of any deficiencies or inconsistencies in the proposal pertaining to the proposal criteria required by ARM 12.9.1005.

(3) Regional supervisors shall maintain a list of potential sending areas and receiving areas that have been identified by private landowners, land management agencies, tribes, and other interests.

(4) The Montana prairie dog working group may review areas for prioritization, and inclusion on the list of approved areas as requested by the department. (History: [87-1-301](#), [87-5-105](#), MCA; [IMP](#), [87-1-301](#), [87-5-105](#), MCA; [NEW](#), 2004 MAR p. 1756, Eff. 8/6/04.)

Rules 12.9.1046 through 12.9.1049 reserved

[12.9.1050](#) APPEAL PROCESS FOR TRANSLOCATION PROPOSALS

(1) Proponents or opponents of the translocation proposal may appeal a department decision to deny or approve a translocation proposal. The proponent or opponent shall prepare a written appeal and submit this appeal to the director within 30 days of the date of the department decision denying or approving the translocation proposal. The appeal must respond to the proposal deficiencies or inconsistencies cited in the regional supervisor's denial of the proposal.

(2) The director shall prepare a written response to the appeal within 30 days of receipt. The response must affirm or remand the regional supervisor's decision. (History: [87-1-301](#), [87-5-105](#), MCA; [IMP](#), [87-1-301](#), [87-5-105](#), MCA; [NEW](#), 2004 MAR p. 1756, Eff. 8/6/04.)